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Attorneys for Defendant  
REUNION.COM, INC.

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

VIOLETTA HOANG, LIVIA HSIAO, and  
MICHAEL BLACKSBURG, and MATTHEW  
HALL, individually and on behalf of a class  
of similarly situated persons,

Plaintiffs,

v.

REUNION.COM, INC., a California  
corporation,

Defendant.

No. 3:08-cv-3518 MMC

**DEFENDANT'S ANSWER AND  
AFFIRMATIVE DEFENSES TO PLAINTIFFS'  
FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF**

**Date:** April 21, 2010  
**Judge:** Hon. Maxine Chesney  
Courtroom 7 (19<sup>th</sup> Floor)

**ANSWER TO FIRST AMENDED COMPLAINT**  
**FOR DAMAGES AND INJUNCTIVE RELIEF**

Defendant, Reunion.com (“Defendant”), by and for its Answer to Plaintiffs’ First Amended Complaint for Damages and Injunctive Relief (the “FAC”), states as follows:

1. Answering paragraph 1 of the FAC, Defendant states that the paragraph contains immaterial legal argument that in enacting Section 17529.5 of the California Business and Professional Code, the California Legislature made certain findings, which findings speak for themselves, and do not constitute factual allegations against Defendant requiring a responsive pleading. Defendant denies that it has engaged in any of the conduct identified in said findings and denies, generally and specifically, all the remaining allegations of paragraph 1.

2. Answering paragraph 2 of the FAC, Defendant admits that the CAN-SPAM Act includes certain findings, which findings speak for themselves, and do not constitute factual allegations against Defendant requiring a responsive pleading. Defendant denies that it has engaged in any of the conduct identified in said findings and denies, generally and specifically, all the remaining allegations of paragraph 2.

3. Answering paragraph 3 of the FAC, to the extent that they are intended to apply to Defendant, Defendant denies, generally and specifically, all the allegations of paragraph 3.

4. Answering paragraph 4 of the FAC, Defendant admits that between approximately 2002 and February 2009, the business formerly known as Reunion.com operated a website at [www.reunion.com](http://www.reunion.com), which website, if authenticated, will speak for itself, including as to how it was promoted or described to members of the putative class. Defendant denies the remaining allegations of paragraph 4.

5. Answering paragraph 5 of the FAC, Defendant admits that beginning in or about April 2008 it provided its members with the technical means to cause the transmission of a non-commercial email invitation to visit and connect at

1 Reunion.com to email addresses in such members' personal email address books,  
2 which tools, member interfaces, and emails, if authenticated, will speak for  
3 themselves. Defendant denies, generally and specifically, all the other allegations of  
4 paragraph 5.

5 6. Answering paragraph 6 of the FAC, Defendant lacks information  
6 sufficient to form a belief as to whether Plaintiffs actually received any e-mails from  
7 Defendant and therefore denies this allegation. For further answer, Defendant states  
8 that the allegations of paragraph 6 constitute conclusory legal allegations, and on that  
9 basis, require no response. Defendant further denies, generally and specifically, that  
10 Plaintiffs received any "commercial e-mail advertisement" from Reunion.com, and all  
11 the remaining allegations of paragraph 6. Defendant denies that it transmitted emails  
12 from a third party's domain name without permission.

13 7. Answering paragraph 7 of the FAC, Defendant states that the allegations  
14 of paragraph 7 constitute conclusory legal allegations, and on that basis, require no  
15 response, and denies, generally and specifically, all the allegations of paragraph 7.

16 8. Answering paragraph 8 of the FAC, Defendant denies, generally and  
17 specifically, all the allegations of paragraph 8.

18 9. Answering paragraph 9 of the FAC, Defendant refers to the text of the  
19 Reunion.com Privacy Polic(ies) in their entirety in effect at the time of the email  
20 transmissions at issue in the FAC (and the express disclosures regarding the technical  
21 means for members to cause emails to be transmitted inviting personal contacts to  
22 visit Reunion.com), which text, if authenticated, will speak for itself, as will the  
23 messages themselves. Defendant further denies, generally and specifically, all the  
24 other allegations of paragraph 9.

25 10. Answering paragraph 10 of the FAC, Defendant refers to the text of  
26 unauthenticated written communications from consumers to the Federal Trade  
27 Commission regarding Reunion.com services or activities during the time period  
28 alleged to be at issue in the FAC, which emails and other communications, if

1 authenticated, will speak for themselves. Defendant denies that it has at any time  
2 transmitted an email on behalf of a member inviting anyone in such member's address  
3 book to visit Reunion.com except at such member's explicit request. Defendant  
4 denies, generally and specifically, all the remaining allegations of paragraph 10.

5 11. Answering paragraph 11 of the FAC, Defendant refers to the text of any  
6 unauthenticated written communications from consumers with the Better Business  
7 Bureau regarding Reunion.com services or activities, if any, which communications, if  
8 authenticated, will speak for themselves. Defendant denies that it has at any time  
9 transmitted an email on behalf of a member inviting anyone in such member's address  
10 book to visit Reunion.com except at such member's explicit request. Defendant  
11 denies, generally and specifically, all the remaining allegations of paragraph 11.

12 12. Answering paragraph 12 of the FAC, Defendant states that to the extent  
13 the allegations set forth in Paragraph 12 state a legal conclusion, no response is  
14 required. To the extent the allegations set forth in Paragraph 12 require a response,  
15 Defendant refers to the various pleadings and other filings in the referenced *Jumpstart*  
16 *Technologies* matter in their entirety which speak for themselves. Defendant denies  
17 the applicability of such non-party pleadings and filings to itself, or that it has engaged  
18 in any such deceptive conduct, and denies all the remaining allegations of  
19 paragraph 12.

20 13. Answering paragraph 13 of the FAC, Defendant states that to the extent  
21 the allegations set forth in Paragraph 13 state a legal conclusion, no response is  
22 required. To the extent the allegations set forth in Paragraph 13 require a response  
23 Defendant refers to the various pleadings and other filings in the *Jumpstart*  
24 *Technologies* matter in their entirety which speak for themselves

25 14. Answering paragraph 14 of the FAC, Defendant is without knowledge or  
26 information sufficient to form a belief as to the allegations of paragraph 14 and  
27 therefore denies such allegations. Further, the opinions of third parties such as  
28 Internet marketing consultants as to the proper application of laws, regulations and/or

1 FTC guidance, which have at any event been since revised, are of no legal force or  
2 effect and require no response.

### 3 THE PARTIES

4 15. Answering paragraph 15 of the FAC, Defendant admits at the times  
5 alleged to be relevant to the allegations in the FAC the allegations of paragraph 15.

6 16. Answering paragraph 16 of the FAC, Defendant is without knowledge or  
7 information sufficient to form a belief as to the allegations of paragraph 16 and  
8 therefore denies the same.

9 17. Answering paragraph 17 of the FAC, Defendant is without knowledge or  
10 information sufficient to form a belief as to the allegations of paragraph 17 and  
11 therefore denies the same.

12 18. Answering paragraph 18 of the FAC, Defendant is without knowledge or  
13 information sufficient to form a belief as to the allegations of paragraph 18 and  
14 therefore denies the same.

15 19. Answering paragraph 19 of the FAC, Defendant is without knowledge or  
16 information sufficient to form a belief as to the allegations of paragraph 19 and  
17 therefore denies the same.

18 20. Answering paragraph 20 of the FAC, Defendant denies that the amount  
19 in controversy in this matter exceeds the sum or value of \$5,000,000 because  
20 Plaintiffs admit they have suffered no damage and therefore are entitled to no relief,  
21 and because Plaintiffs' damages, if any, are limited to \$1,000,000 in the aggregate  
22 pursuant to Cal. Bus. & Prof. Code § 17529.5(b)(1)(B)(ii). Defendant is without  
23 knowledge or information sufficient to form a belief as to the citizenship of Plaintiffs  
24 or the members of the proposed alleged plaintiff classes and therefore denies the same.  
25 The remaining allegations of paragraph 20 state legal conclusions to which no  
26 response is required, but to the extent any is required, Defendant denies, generally and  
27 specifically, all the remaining allegations in paragraph 20, including that there exists  
28 any "class" subject to Fed.R.Civ. P. 23.

1           21. Answering paragraph 21 of the FAC, Defendant admits that Plaintiffs  
2 purport to assert personal jurisdiction over Defendant, and that it is registered with the  
3 California Secretary of State, and maintains offices in California.

4           22. Answering paragraph 22 of the FAC, Defendant lacks information  
5 sufficient to form a belief as to Plaintiffs' places of residence and therefore denies the  
6 same. Defendant denies that Plaintiffs have standing to rely upon Reunion.com's  
7 User Agreement as Plaintiffs are not parties thereto. The remaining allegations of  
8 paragraph 22 state legal conclusions to which no response is required, but to the extent  
9 any is required, Defendant denies, generally and specifically, all the remaining  
10 allegations in paragraph 22.

11           23. Answering paragraph 23 of the FAC, Defendant lacks information  
12 sufficient to form a belief as to Plaintiffs' places of residence and therefore denies the  
13 same. Defendant admits that the FAC accurately quotes an excerpt from its User  
14 Agreement, which agreement, if authenticated, speaks for itself. Defendant denies  
15 that Plaintiffs have standing to rely upon Reunion.com's User Agreement as Plaintiffs  
16 are not parties thereto. The remaining allegations of paragraph 23 state legal  
17 conclusions to which no answer is required, but to the extent that these allegations  
18 require an answer, they are denied.

19           24. Answering paragraph 24 of the FAC, Defendant admits that during the  
20 time period alleged to be at issue in the FAC, it operated a website available at  
21 [www.reunion.com](http://www.reunion.com), which website allows members to search for old friends,  
22 classmates and colleagues and add other members to their network.

23           25. Answering paragraph 25 of the FAC, Defendant denies that it "boasts" or  
24 makes incorrect claims, but Defendant admits that it has a significant number of  
25 registered members. Given the FAC's failure to specify a relevant time period,  
26 Defendant is unable to admit or deny the FAC's allegations regarding membership  
27 numbers. For further answer, Defendant states that the only relevant "time period" are  
28 the alleged dates the individual named Plaintiffs claim to have received emails from

1 Reunion.com: May 5, July 17, and July 25, 2008. Defendant denies the remaining  
2 allegations of paragraph 25.

3 26. Answering paragraph 26 of the FAC, Defendant admits that on or around  
4 May 5, July 17, and July 25 2008 (hereafter, the “Alleged Campaign Dates”), visitors  
5 to the Reunion.com website were invited to register with Reunion.com via user  
6 interfaces that requested demographic information about the registrant, and later (once  
7 the visitor had registered), invited such registered members to add personal contacts to  
8 their Reunion.com network, via separate user interfaces. Such interfaces, if  
9 authenticated will speak for themselves. Defendant denies the remaining allegations  
10 of paragraph 26.

11 27. Answering paragraph 27 of the FAC, Defendant lacks the information  
12 sufficient to form a belief as to the third party opinions that are alleged, and such are  
13 of no legal force or effect and require no response. Defendant further states that the  
14 user interfaces offering the technical means for registered members to cause the  
15 transmission of non-commercial emails to their personal contacts to visit  
16 Reunion.com, if authenticated, speak for themselves. Defendant further denies,  
17 generally and specifically, all the other allegations of paragraph 27.

18 28. Answering paragraph 28 of the FAC, Defendant refers to the text of the  
19 Reunion.com Privacy Polic(ies), in their entirety in effect at the time of the email  
20 transmissions at issue in the FAC, to the user interfaces offering members the  
21 technical means to cause the transmission of emails inviting personal contacts to visit  
22 and connect at Reunion.com, which text and user interfaces, if authenticated, will  
23 speak for themselves. Defendant further denies, generally and specifically, all the  
24 remaining allegations of paragraph 28.

25 29. Answering paragraph 29 of the FAC, Defendant refers to the text of the  
26 Reunion.com Privacy Polic(ies), in their entirety in effect at the time of the email  
27 transmissions at issue in the FAC, to the user interfaces offering members the  
28 technical means to cause the transmission of emails inviting personal contacts to visit



1 Reunion.com, which text and user interfaces, if authenticated, will speak for  
2 themselves. Defendant denies that any such text or interfaces are false, fraudulent, or  
3 deceptive. Defendant further denies, generally and specifically, all the remaining  
4 allegations of paragraph 29. Defendant denies, generally and specifically, all the  
5 remaining allegations of paragraph 29.

6 30. Answering paragraph 30 of the FAC, Defendant refers to the text of the  
7 emails (including the subject lines thereof) and to the user interfaces offering members  
8 the technical means to cause the transmission of emails inviting personal contacts to  
9 visit Reunion.com, which text and user interfaces, if authenticated, will speak for  
10 themselves. Defendant denies that any such text or interfaces are false, fraudulent, or  
11 deceptive. Defendant further denies, generally and specifically, all the remaining  
12 allegations of paragraph 30.

13 31. Answering paragraph 31 of the FAC, Defendant refers to the text of the  
14 emails (including the subject lines thereof) and to the user interfaces offering members  
15 the technical means to cause the transmission of non-commercial emails inviting  
16 personal contacts to visit Reunion.com, which text and user interfaces, if  
17 authenticated, will speak for themselves. Defendant denies that any such text or  
18 interfaces are false, fraudulent, or deceptive. Defendant further denies, generally and  
19 specifically, all the remaining allegations of paragraph 31.

20 32. Answering paragraph 32 of the FAC, Defendant denies, generally and  
21 specifically, all the allegations of paragraph 32.

22 33. Answering paragraph 33 of the FAC, Defendant refers to the text of the  
23 Reunion.com Privacy Polic(ies), in their entirety in effect at the time of the email  
24 transmissions at issue in the FAC, to the user interfaces offering members the  
25 technical means to cause the transmission of non-commercial emails inviting personal  
26 contacts to visit Reunion.com, and to the text of the emails themselves, which text and  
27 user interfaces, if authenticated, will speak for themselves. Defendant denies that any  
28 such text or interfaces are false, fraudulent, or deceptive. Defendant further denies,



1 generally and specifically, all the remaining allegations of paragraph 33.

2 34. Answering paragraph 34 of the FAC, Defendant is without knowledge or  
3 information sufficient to form a belief as to the truth of the allegations in paragraph 34  
4 and on that basis denies them.

5 35. Answering paragraph 35 of the FAC, Defendant denies, generally and  
6 specifically, all the allegations of paragraph 35.

7 36. Answering paragraph 36 of the FAC, Defendant denies, generally and  
8 specifically, all the allegations of paragraph 36.

9 37. Answering paragraph 37 of the FAC, Defendant denies, generally and  
10 specifically, all the allegations of paragraph 37.

11 38. Answering paragraph 38 of the FAC, Defendant is without knowledge or  
12 information sufficient to form a belief as to the truth of the allegations in paragraph 38  
13 and therefore denies them.

14 39. Answering paragraph 39 of the FAC, Defendant denies, generally and  
15 specifically, all the allegations of paragraph 39.

16 40. Answering paragraph 40 of the FAC, Defendant denies, generally and  
17 specifically, all the allegations of paragraph 40.

18 41. Answering paragraph 41 of the FAC, Defendant denies, generally and  
19 specifically, all the allegations of paragraph 41.

20 42. Answering paragraph 42 of the FAC, Defendant admits that Plaintiffs  
21 purport to describe some features of an electronic mailing list. Defendant is without  
22 knowledge or information sufficient to form a belief as to the truth of the allegations  
23 in paragraph 42 and therefore denies them.

24 43. Answering paragraph 43 of the FAC, Defendant is without knowledge or  
25 information sufficient to form a belief as to the truth of the allegations in paragraph 43  
26 and therefore denies them.

27 44. Answering paragraph 44 of the FAC, Defendant is without knowledge or  
28 information sufficient to form a belief as to the truth of the allegations in paragraph 44

1 and therefore denies them.

2 45. Answering paragraph 45 of the FAC, Defendant denies, generally and  
3 specifically, all the allegations of paragraph 45.

4 46. Answering paragraph 46 of the FAC, Defendant denies, generally and  
5 specifically, all the allegations of paragraph 46.

6 47. Answering paragraph 47 of the FAC, Defendant denies, generally and  
7 specifically, all the allegations of paragraph 47.

8 48. Answering paragraph 48 of the FAC, Defendant is without knowledge or  
9 information sufficient to form a belief as to the truth of the allegations in paragraph 48  
10 and therefore denies them.

11 49. Answering paragraph 49 of the FAC, Defendant is without knowledge or  
12 information sufficient to form a belief as to the truth of the allegations in paragraph 49  
13 and therefore denies them.

14 50. Answering paragraph 50 of the FAC, Defendant denies, generally and  
15 specifically, all the allegations of paragraph 50.

16 51. Answering paragraph 51 of the FAC, Defendant denies, generally and  
17 specifically, all the allegations of paragraph 51.

18 52. Answering paragraph 52 of the FAC, Defendant denies, generally and  
19 specifically, all the allegations of paragraph 52.

20 53. Answering paragraph 53 of the FAC, Defendant responds that this  
21 paragraph inappropriately cites legal authorities, and makes legal arguments and  
22 conclusions, and as such requires no response. Defendant further responds that the  
23 terms of Senate Reports or other legislative materials speak for themselves.

24 54. Answering paragraph 54 of the FAC, Defendant responds that to the  
25 extent that this paragraph inappropriately cites legal authorities, and makes legal  
26 arguments and conclusions, and as such requires no response. Defendant admits that  
27 it received copies of some consumer complaints to the Better Business Bureau about  
28 emails inviting recipients to visit [www.reunion.com](http://www.reunion.com), which documents, if

1 authenticated, will speak for themselves. Defendant denies the remaining allegations  
2 of paragraph 54.

3 55. Answering paragraph 55 of the FAC, Defendant admits that it received  
4 copies of some consumer complaints to the Better Business Bureau about emails  
5 inviting recipients to visit [www.reunion.com](http://www.reunion.com), and responded to some of these  
6 consumers on the website of the Better Business Bureau of Los Angeles, which  
7 documents, if authenticated, will speak for themselves. Defendant denies, generally  
8 and specifically, all the remaining allegations of paragraph 55, including the truth of  
9 the alleged complaint, and/or the truth of any alleged complaints contained in Exhibit  
10 C.

11 56. Answering paragraph 56 of the FAC, Defendant responds that this  
12 paragraph inappropriately cites legal authorities, and makes states legal arguments and  
13 conclusions, and as such requires no response. To the extent that any answer is  
14 required, Defendant denies, generally and specifically, all the allegations of paragraph  
15 56.

16 57. Answering paragraph 57 of the FAC, Defendant states that paragraph 57  
17 constitutes a legal conclusion to which no answer is required. To the extent that any  
18 answer is required, Defendant denies, generally and specifically, all the allegations of  
19 paragraph 57.

20 58. Answering paragraph 58 of the FAC, Defendant refers to the text of the  
21 Reunion.com Privacy Polic(ies) in their entirety, in effect at the time of the email  
22 transmissions at issue in the FAC (and the express disclosures regarding the process  
23 for initiating emails inviting a member's personal contacts to visit Reunion.com),  
24 which texts and disclosures, if authenticated, will speak for themselves. Defendant  
25 denies, generally and specifically, all the allegations of paragraph 58.

26 59. Answering paragraph 59 of the FAC, Defendant denies the first sentence  
27 of the paragraph. The second sentence constitutes legal argument and conclusion to  
28 which no response is required. Defendant denies, generally and specifically, all the

1 remaining allegations of paragraph 59.

2 60. Answering paragraph 60 of the FAC, Defendant denies, generally and  
3 specifically, all the allegations of paragraph 60

4 61. Answering paragraph 61 of the FAC, Defendant states that paragraph 61  
5 contains legal authorities, commentaries and conclusions which do not require a  
6 response. Defendant denies, generally and specifically, all the remaining allegations  
7 of paragraph 61.

8 62. Answering paragraph 62 of the FAC, paragraph 62 consists solely of  
9 legal conclusions to which no response is required. For further answer, Defendant  
10 denies, generally and specifically, all the allegations of paragraph 62.

11 63. Answering paragraph 63 of the FAC, to the extent that they contain legal  
12 conclusions to which no responsive pleading is required, Defendant denies the  
13 allegations of paragraph 63. Defendant admits that at various times, it briefly stored  
14 email addresses for the limited purpose of sending reminder emails. For further  
15 answer, Defendant denies, generally and specifically, all the remaining allegations of  
16 paragraph 63.

17 64. Answering paragraph 64 of the FAC, Defendant denies, generally and  
18 specifically, all the allegations of paragraph 64.

19 65. Answering paragraph 65 of the FAC, Defendant admits that it is  
20 generally aware that some recipients of emails inviting recipients to visit Reunion.com  
21 contacted the FTC to complain about various aspects of the communication, including  
22 whether the sender was aware it would be sent or whether the recipient expected to  
23 receive the message. The purported examples of complaints to the FTC quoted in  
24 paragraph 65 and/or purportedly attached in Exhibit B to the FAC, if authenticated,  
25 speak for themselves as to the contents of the complaints. Defendant denies that it  
26 transmitted any emails on behalf of members to personal contacts of such members,  
27 except following disclosure and consent to each such transmission.

28 66. Answering paragraph 66 of the FAC, Defendant responds that it is

1 without knowledge information sufficient to form a belief as to the truth of the  
2 allegations of paragraph 66 and on that basis denies them. Defendant denies,  
3 generally and specifically, all the remaining allegations of paragraph 66, and  
4 specifically denies the truth of the purported complaints quoted in paragraph 66 and/or  
5 in Exhibit B to the FAC.

6 67. Answering paragraph 67 of the FAC, Defendant responds that any such  
7 complaints, if verified, speak for themselves and that no response is required.

8 68. Answering paragraph 68 of the FAC, Defendant denies that Plaintiffs  
9 Hoang and Hsiao are representative of any identifiable class or share any common  
10 claims with any other named putative class representatives during the time periods at  
11 issue in the FAC. Defendant is without knowledge or information sufficient to form a  
12 belief as to the truth of the remaining allegations in paragraph 68 and therefore denies  
13 the same.

14 69. Answering paragraph 69 of the FAC, Defendant denies that Plaintiffs  
15 Blacksbury and Hall are representative of any identifiable class or share any common  
16 claims with any other named putative class representatives during the time periods at  
17 issue in the FAC. To the extent that this paragraph states legal conclusions, no  
18 responsive pleading is required. Defendant is without knowledge or information  
19 sufficient to form a belief as to the truth of the remaining allegations in paragraph 69  
20 and therefore denies the same.

21 70. Answering paragraph 70 of the FAC, Defendant states that paragraph 70  
22 states a legal conclusion to which no responsive pleading is required. To the extent  
23 that one is required, Defendant denies, generally and specifically, all the allegations in  
24 paragraph 70, and that a class action is proper.

25 71. Answering paragraph 71 of the FAC, Defendant states that paragraph 71  
26 states a legal conclusion to which no responsive pleading is required. To the extent  
27 that one is required, Defendant denies, generally and specifically, all the allegations in  
28 paragraph 71, and that common questions of law and fact unite class members.

1           72. Answering paragraph 72 of the FAC, Defendant states that paragraph 72  
2 states a legal conclusion to which no responsive pleading is required. To the extent  
3 that one is required, Defendant denies, generally and specifically, all the allegations in  
4 paragraph 72, and that the named Plaintiffs or their Counsel can fairly or adequately  
5 represent any class.

6           73. Answering paragraph 73 of the FAC, Defendant repeats and incorporates  
7 by reference all of its responses set forth above. Defendant denies, generally and  
8 specifically, all the allegations of paragraph 73.

9           74. Answering paragraph 74 of the FAC, Defendant admits that emails were  
10 sent from California servers.

11           75. Answering paragraph 75 of the FAC, Defendant denies, generally and  
12 specifically, all the allegations of paragraph 75.

13           76. Answering paragraph 76 of the FAC, Defendant denies, generally and  
14 specifically, all the allegations of paragraph 76.

15           77. Answering paragraph 77 of the FAC, the allegation of paragraph 77  
16 states legal conclusions to which no responsive pleading is required. Defendant  
17 denies, generally and specifically, all the remaining allegations of paragraph 77.

18           78. Answering paragraph 78 of the FAC, Defendant repeats and incorporates  
19 by reference all of its answers set forth above.

20           79. Answering paragraph 79 of the FAC, to the extent that paragraph 79  
21 contains legal conclusions, no responsive pleading is required. Defendant denies,  
22 generally and specifically, all the allegations of paragraph 79.

23           80. Answering paragraph 80 of the FAC, Defendant admits that emails were  
24 sent from California servers.

25           81. Answering paragraph 81 of the FAC, to the extent that paragraph 81  
26 contains legal conclusions, no responsive pleading is required. Defendant denies,  
27 generally and specifically, all the allegations of paragraph 81.

28           82. Answering paragraph 82 of the FAC, Defendant repeats and incorporates

1 by reference all of its answers set forth above.

2 83. Answering paragraph 83 of the FAC, Defendant denies, generally and  
3 specifically, all the allegations of paragraph 83.

4 84. Answering paragraph 84 of the FAC, Defendant admits that emails were  
5 sent from California servers.

6 85. Answering paragraph 85 of the FAC, Defendant denies, generally and  
7 specifically, all the allegations of paragraph 85.

8 **PRAYER FOR RELIEF**

9 Defendant respectfully requests that Plaintiffs' prayer for relief be denied in its  
10 entirety and that Plaintiffs take nothing from their Complaint.

11 **AFFIRMATIVE DEFENSES**

12 For its additional affirmative defenses, Defendant alleges as follows:

13 **SECOND DEFENSE**

14 **Subject Matter Jurisdiction**

15 No subject matter jurisdiction exists because plaintiffs cannot meet the amount  
16 in controversy required for diversity jurisdiction.

17 **THIRD DEFENSE**

18 **Failure To State A Claim**

19 Plaintiffs have failed to state any claim in any of their causes of action that sets  
20 forth sufficient facts upon which any relief may be granted as a matter of law.

21 **FOURTH DEFENSE -**

22 **No Viable Class**

23 Plaintiffs cannot maintain this action as a class action under Federal Rule of  
24 Civil Procedure 23 because, among other reasons, there are no questions of law or fact  
25 common to any alleged class, the claims or defenses of the representative parties are  
26 not typical of the claims or defenses of any alleged class, the representative parties  
27 and their counsel, will not fairly and adequately protect the interests of any alleged  
28 class, and a class action is not a superior means of seeking redress for the purely



1 technical statutory violations alleged.

2 **FIFTH DEFENSE -**

3 **Federal Preemption**

4 Plaintiffs' claims are barred, in whole or in part, because their claims are  
5 preempted by the federal Controlling the Assault of Non-Solicited Pornography and  
6 Marketing Act of 2003 ("CAN-SPAM") because: (1) they do not allege the type of  
7 falsification techniques or deception articulated in 15 U.S.C. § 7704(a)(1) and (2),  
8 which have an express materiality requirement, and thereby are not within the  
9 preemption carve out of 15 U.S.C. § 7707(b)(1); and (2) because the email  
10 transmissions in question constituted the transmission, routing, relaying, handling, or  
11 storing, through an automatic technical process, of an electronic mail message for  
12 which another person has identified the recipients or provided the recipient addresses,  
13 which are expressly permitted as "routine conveyances" by CAN-SPAM.

14 **SIXTH DEFENSE -**

15 **Unconstitutionality**

16 Any award of statutory or punitive damages to Plaintiffs or any member of the  
17 alleged class(es) would be grossly disproportionate to any actual injury sustained by  
18 Plaintiffs or any putative class member and would therefore deny Defendant of its  
19 rights under the Due Process or Excessive Fines clauses of the Fifth, Eighth, and  
20 Fourteenth Amendments to Constitution of the United States, respectively.

21 **SEVENTH DEFENSE –**

22 **Routine Conveyance (Cal. Bus. & Prof. Code 17529.5(B)(1)(D))**

23 Plaintiffs' claims are barred, in whole or in part, pursuant to Cal. Bus. & Prof.  
24 Code § 17529.5(b)(1)(D) because Defendant was only involved in the routine  
25 transmission of an e-mail over its computer network.

26 **EIGHTH DEFENSE –**

27 **Routine Conveyance (15 U.S.C. § 7702(9))**

28 Plaintiffs' claims are barred, in whole or in part, pursuant to 15 U.S.C. §

1 7702(9) because Defendant was only involved in the routine transmission of an e-mail  
2 over its computer network.

3 **NINTH DEFENSE –**

4 **Good Faith**

5 At all times relevant, Defendant acted reasonably and did attempt in good faith  
6 to comply with Cal. Bus. & Prof Code. § 17529 by employing practices and  
7 procedures reasonably designed to effectively prevent unsolicited commercial e-mail  
8 advertisements in violation of that statute.

9 **TENTH DEFENSE –**

10 **No Article III Or Statutory Standing**

11 Plaintiffs lack standing under Article III of the Constitution or under Cal.  
12 Bus. & Prof. Code § 17529, both because Plaintiffs have not suffered any damages  
13 and because they have failed to allege reliance.

14 **ELEVENTH DEFENSE –**

15 **Unclean Hands**

16 Plaintiffs' requests for equitable relief are barred by the doctrine of unclean  
17 hands.

18 **TWELFTH DEFENSE –**

19 **Laches**

20 Plaintiffs' claims are barred by the doctrine of laches.

21 **THIRTEENTH DEFENSE –**

22 **Equitable Estoppel / Waiver**

23 Plaintiffs' claims are barred by equitable estoppel, Plaintiffs' waiver, and  
24 Plaintiffs' acquiescence to Defendant's alleged conduct.

25 **FOURTEENTH DEFENSE -**

26 **No Proximate Cause**

27 Any losses or damages incurred by Plaintiffs, or any member of the alleged  
28 class(es), were proximately caused by Plaintiffs themselves, their attorneys, or other

1 third parties.

2 **FIFTEENTH DEFENSE –**

3 **License**

4 Plaintiffs' claims are barred, in whole or in part, because at all operative times,  
5 Defendant had an express and/or implied license to engage in the accused conduct.

6 **SIXTEENTH DEFENSE –**

7 **Consent**

8 Some or all of Plaintiffs provided prior express or implied consent to the  
9 transmission and receipt of the email messages at issue in the FAC.

10 **SEVENTEENTH DEFENSE –**

11 **No Commercial Advertisement**

12 The alleged Emails do not constitute "Commercial email advertisements" under  
13 Cal. Bus. & Prof. Code § 17529 because their transmission was not caused for the  
14 purpose of advertising or promoting the sale of Reunion.com services. In facilitating  
15 the transmission of its members' Emails, Reunion.com was not acting as an  
16 Advertiser under Cal. Bus. & Prof. Code § 17529.

17 Defendant hereby gives notice that it intends to rely upon such other additional  
18 defenses as may become available or apparent during the course of discovery and  
19 therefore reserves the right to amend or supplement its Answer, file further pleadings,  
20 and assert additional claims and defenses as supported by the evidence.

21  
22 **DATED:** April 23, 2010

Respectfully submitted,

23 s/ Ronald Jason Palmieri  
24 One of the Attorneys for Defendant

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